

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Patricia M. Colburn,
Plaintiff

v.

Richard Cappiello,
Defendant

Civil Action No. 04-11784 MLW

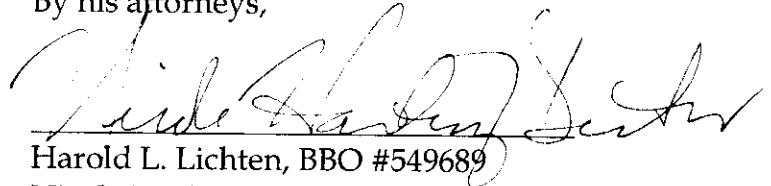
MOTION TO DISMISS

Pursuant to Fed. R. Civ. Pro. Rule 12(b)(6), defendant Richard Cappiello respectfully moves that the Plaintiff's complaint in the above-captioned matter be dismissed in its entirety for failure to state a claim upon which relief may be granted. As presented in detail in the attached memorandum of law, the Plaintiff's claims are barred by the applicable statute of limitations and Mr. Cappiello is not a proper defendant under the claims brought by the Plaintiff.

Respectfully submitted,

Richard Cappiello,

By his attorneys,

A handwritten signature in black ink, appearing to read "Harold L. Lichten", written over a horizontal line.

Harold L. Lichten, BBO #549689

Nicole Horberg Decter, BBO #658268

Pyle, Rome, Lichten, Ehrenberg &

Liss-Riordan, P.C.

18 Tremont Street, Suite 500

Boston, MA 02108

Telephone: (617) 367-7200

Facsimile: (617) 367-4820

Dated: August 17, 2004